Supreme Court, U.S.
FILED

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No._____

SUPREME COURT OF THE UNITED STATES OF AMERICA

GREGORY J. EVERETT
Petitioner.

V.

UNITED STATES OF AMERICA,
Respondent,
Solicitor General of the United States

On rehearing of Appeal from
UNITED STATES COURT OF APPEALS
FOR SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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6908

The term "taxpayer" is a specific, narrow and strict definition describing to whom the statutes for income tax applies. No record of a determination exists supporting the appelation of such status to petitioner. Without such, being lawfully done, the petitioner is without the jurisdiction/authority of the administering agency.

Agency employees act on the belief that having income makes petitioner subject to the income tax. This Court [Supreme] has held that the income [property] is not the subject of the tax but rather taxable activities [in statute]. Inferior courts claim that the Sixteenth Amendment created a direct non-apportioned income tax [income being the subject of the tax] in opposition to this Courts holdings, rulings, decisions regarding the same.

QUESTIONS PRESENTED FOR REVIEW

1. Does Certiorari lie as the proper form of relief from governmental acts when those acts require statutory authority and government refuses to state which specific statutes where relied upon before taking of property, while governments authority was challenged at each and every step of the process?

2. Can Congress, by statute, deny due-process-of-law when taking property, when the taking is based solely on prima facie evidence that person is subject to the individual income tax, denying an opportunity to be judicially heard?

3. Do inferior courts have the authority to change, overrule, or otherwise ignore what this court [Supreme] has construed to be the subject of the individual income tax while unlawfully applying the title of taxpayer, as that term is strictly and narrowly defined in statute?

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On Petition of Writ of Certiorari
To the United States Court of Appeals
for the Sixth Circuit

Gregory J. Everett
Petitioner, pro se
v.
United States of America
respondent
Solicitor General of the United States
Room 5614
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PETITION FOR WRIT OF CERTIORARI

Whereas the government and it's agents/agencies has seized petitioners property without presenting statutory authority giving specific jurisdiction over petitioner, and denying petitioner to be judicially heard, when petitioner consistently challenged government for their authority and jurisdiction at each and every step of the process.

JURISDICTION

This is a case in controversy arising under the Constitution and laws of the United States. Art III Sect.2, Constitution. Also, 28 U.S.C.1651 (a)(b), 1361,1331. and decisions of federal question that conflicts with decisions of this court.

STATUTORY PROVISIONS INVOLVED

26 U.S.C. Section 7701(a)(14); Section 1313(b).

REASONS WHY THIS PETITION SHOULD BE GRANTED

The status of taxpayer is a strictly and narrowly defined, exclusive, legal description, as found in the Internal Revenue Code Sections 7701(a)(14) also, 1313(b). A critical, essential element necessary for the government to exact a lawful tax. Without the individual knowing exactly how they come to be subject to such jurisdiction, especially before the taking of property, and no less after the taking, is a denial of due process.

To the extent that Constitutional rights are involved, due process of law imports a judicial review of the action of administrative or executive officers. This proposition is undisputed so far as questions of law are concerned.

Government agencies must act within Constitutional parameters. These and other limits have been codified into statutes. The taking of one's property under the guise of an income tax without so much as citing the statute that allegedly brings that person under the jurisdiction of that tax, is repugnant to the idea of a fair and impartial hearing before the taking of an individuals liberties. Denying a judicial review, in this instant, is a denial of first amendment right of a right to redress the government for grievances, denial of forth amendment right to be secure in unreasonable searches and seizures, denial of fifth amendment right of being deprived of life, liberty, or property without due process of law. Petitioner is also, denied sixth amendment right to confront evidence and witness against me, as action by government implies that petitioner has violated a statute of the United States from some evidence or witness not known of by petitioner.

Also, denial of the right to the Assistance of competent and effective Counsel at each and every step of the process.

FACTS:

In April of 2000, agents/officers of the Internal Revenue Service sent a form letter called "Notice of Levy" to several

account holders of petitioner, after having sent prior notices of Intent to Levy, Notice of Lien, etc. each and every communication from the IRS was challenged for it's authority to proceed with action as there was no record of a determination made that petitioner is a "taxpayer" as the term is narrowly and strictly defined in the Internal Revenue Code, as Freedom of Information Act and Right to Privacy Act requests did not produce such records.

Petitioner proceeded to research and file a petition in Federal District court to protect due process via a judicial hearing and injunctive relief on the court's own authority to do so, also to appoint competent and effective Assistance of Counsel to protect petitioners rights at each and every step of the proceeding. A few days prior to the filing, the banks had already converted the funds to the IRS.

Federal District Court heard petitioner and governments Motion to Dismiss and scheduled a hearing in October 2000. Immediately the case was reassigned to another Judge who ordered the government's Motion to Dismiss. Petitioner requested rehearing and governments Motion was upheld. Petitioner appealed to U.S. Appeals Court who upheld Motion to Dismiss and ordered monetary sanctions against

Petitioner for frivolous argument. Petitioner requested rehearing and Motion to Dismiss was upheld.

STATEMENT OF THE CASE:
See appendix 15-25,Denial of 1st,4th,5th,6th Amendment rights.
OPINIONS BELOW:
See appendix 2-14. Motion to dismiss based on sovereign immunity and failure to state a cause of action.

BRIEF FOR WRIT OF CERTIORARI
IN RESPONSE TO QUESTION 1

Does Certiorari lie as the proper form of relief from governmental acts when those acts require statutory authority and government refuses to state which statutes where relied upon before taking of property and governments authority was challenged at each and every step of the process?

This Court has construed:

> "...Here the Government seized property not to preserve evidence of wrong doing, but to assert ownership and control over the property itself. Our cases establish that government action of this consequence must comply with the Due Process Clause of the Fifth and Fourteenth Amendments."

AND:

> "Fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights...No better instrument has been devised for arriving at the truth than to give a person in jeopardy of serious loss notice of the case against him and an opportunity to meet it."
> U.S. v James Daniel Good Real Property, U.S. 114 S. Ct. 492(1993)

This Court also construed :

> "Our system of taxation is based upon voluntary assessment and payment, not upon distraint."

AND:

> "....taxpayers had the same right of action against Collectors to recover illegally collected internal revenue taxes."
> Flora v U.S., 362 U.S.145: 80S. Ct.630, 647(1960)

The government has given no fact(s) in law making Petitioner a "taxpayer" as that term is strictly and narrowly defined in the Internal Revenue Code. Petitioner denies being such a person as defined in code. Petitioner has challenged the government's assumption of being such a person, at each and every step of the process, for statutory authority that Petitioner is such a person.

There is no established administrative procedure for one who is not a "taxpayer".

TheTaxpayer Bill of Rights affords no protection as it applies only to "taxpayers" as that term is defined in the code.

All statutes providing for challenges to the code or Secretary are for "taxpayers". Tax Court does not have jurisdiction to determine if one is a "taxpayer" or make a determination that one is liable for or subject to the tax but only has authority to adjudicate correctness of "taxpayers" disputes of amounts.

The District Court allowed governments Motion to Dismiss without a hearing and upheld on request for rehearing, U.S. District Court of Appeals held Motion to Dismiss and rehearing while constantly applying Petitioner with status as a "taxpayer" based on mere conclusion of law that income equals being a subject to or liable for the tax. U.S. Court of Appeals cited case in which it stated that this Court had long settled that the Sixteenth Amendment authorized a direct tax on income without apportionment, contrary to holding by this Court in *Brushaber & Stanton.*

Petitioner used no frivolous "tax protestor" arguments in presenting facts and law while government presented such cases to the court laying claim that they were the same as Petitioners arguments, while not one of them was on point with Petitioners arguments.

> "***They [the revenue laws] relate to taxpayers, and not to nontaxpayers. The later are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law.***[*Id* 281 F. at 238]

AND:

> "Our plaintiffs are not taxpayers and could not sue for a tax refund as a taxpayer could. All they could do was to sue to recover their property, which was the funds due them as an equitable adjustment under the contract, and this is exactly what they have done."
> Economy Plumbing &Heating v U.S., 470 F.2d 585 (1972).

The government and its agents/agency refuses to disclose what the basis for the assessment is or that a determination was made by agent/officer that Petitioner is liable for or subject to the tax.

> "....the government will be required to disclose, through discovery, facts in its sole possession, unless it voluntarily discloses the basis for its assessment, which if sufficient, will terminate discovery proceedings and justify judgment for the government."
> Laing v U.S., 423 U.S. 161; 96 S. Ct. 473;46 L.Ed.2d416 (1976)

ALSO;

> "Respondent argues on the other hand that unless the Government has some obligation to disclose the factual basis for its assessments, either in response to a discovery request or on direct order of the court, the exception to the Anti-Injunction Act in Enochs v Williams Packing Co., supra, is meaningless. The taxpayer can never know, unless the Government tells him, what the basis for the assessment is and thus can never show that the Government will certainly be unable to prevail."
> Commissioner v. Shapiro,424 U.S.614;96 S. Ct. 1062; 47L.Ed.2d 278 (1976)

ALSO;

> "The court holds that suits by nontaxpayers generally are not barred."
> South Carolina v Regan,465U.S.367;104 S.Ct.1107; 79L.Ed.2d372(1984)

Whereas:

> The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to plaintiff.
> 28 U.S.C.1361

Where:

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid if their respective jurisdictions and agreeable to the usages and principles of law.
>
> (b)An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.
> 28 U.S.C. 1651

AND:

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

This Court has the authority to remand this case back to the District Court; to mandate the officers/agents and agency to comply with discovery; to mandate the return of all property(s) seized; to mandate evidence of authority from agents/officers and agency, to order damages.

> "If in the course of enforcing tax laws internal revenue agents ransack peoples homes without a warrant, or otherwise violate the Fourth Amendment, the argument for a damage remedy against the agents is a powerful one, since a suit for a tax refund would not be an adequate substitute."
> Cameron v I.R.S.,773F.2d126(1985)(emphasis added)

If this Court accepts the governments claim of sovereign immunity to suit and that Petitioner has no cause, without this court hearing Petitioner or mandating the District Court to hear or otherwise provide justice, petitioner will be forever denied his rights under First (right of redress), Fourth (right against warrantless seizures), and Fifth (due-process) Constitutional Rights.

> "Where the alleged violations of the Fourth and Fifth Amendments by defendants formed the sole basis of relief sought, and if the allegations had any foundation in truth, plaintiff's legal right had been violated, the court could not dismiss the action for want of jurisdiction on ground that the cause of action was patently without merit. Jud. Code S.24 (1),28 U.S.C.A.s 41(1); U.S.C.A.Const.Amends.4,5."
> Bell v Hood 327 U.S.678;66 S. Ct.773(1946)

IN RESPONSE TO QUESTION 2

Can Congress, by statute, deny due-process-of-law when taking property, when the taking is based solely on prima facie evidence or less, that the individual is subject to the individual income tax?

Government's claim to action is that Petitioner is a "taxpayer" as that term is narrowly and strictly defined in the IRC. Petitioner denies being a "taxpayer" as defined and has challenged the government to support that claim with the statute giving jurisdiction over petitioner before applying that title. Government refuses to give legal authority or jurisdiction over petitioner, but has stated that the Sixteenth Amendment authorizes the "income tax" and is therefore jurisdiction.

> "(1) *Rule 1.* An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution." 26 CFR Ch. 1 (4-1-96) 601.106

AND:

> "And by definition the term "taxpayer" includes any person, trust or estate subject to a tax *imposed* by the revenue act.....Since the statutory definition of "taxpayer" is exclusive, the federal courts do not have the power to create non-statutory taxpayers for the purpose of applying the provisions of the Revenue Acts..."
> C.I.R.v Trustees of L. Inv.Ass'n.,100 F.2d 18 (1939)

AND:

> "In construing statutes levying taxes, it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or enlarge their operations to embrace matters not specifically pointed out, and in case of doubt they are construed most strongly against the government and in favor of the citizen."
> Gould v Gould, 245 U.S.151;38 S.Ct. 53;62 L.Ed.211 (1917)

Government does not acknowledge that a record of a determination has been made by an officer/agent providing some factual foundation for assessment but only presumption of being liable for or subject to the tax.

> "Portillo argues that in this case the I.R.S. failed to make such a "determination" and therefore the notice was invalid and the tax court consequently lacked jurisdiction" "The need for tax collection does not serve to excuse the government, however, from providing some factual foundation for its assessments. *Id.* "The tax collectors presumption of correctness has a herculean muscularity of Goliathlike reach, but we strike an Achilles' heel when we find no muscles, no tendons, no ligaments of fact."*Id.* Portillo v C.I.R., 932 F.2d. 1128 (5th Cir. 1991).

Agents acting on a mere presumptive basis is not due-process. A notice and opportunity to be heard is required before a person can lawfully be deprived of liberty or property.
Fuentes v. Shevin,407 U.S.67(1972) *Matthews v. Eldridge*, 424 U.S. 319(1976)

Notice of hearing requires full disclosure of facts upon which impending deprivation is based and opportunity to present argument. *Goss v. Lopez*,419 U.S.565(1975) A fair hearing contemplates full disclosure; and, an order of an administrative agency without factual support is without due process. *Garvey v. Freeman*, 397 F.2d. 600(10th Cir.1968) Government claims that they are protected by sovereign immunity, that although they present no fact(s) in law that Petitioner is a "taxpayer"(as defined), nor has any officer/agent made a determination of being liable for the tax, but having not consented to suit, bars Petitioner from due-process.

> "Not only that no such power is given, but that it is absolutely prohibited, both to the executive and the legislative, to deprive anyone of life, liberty, or property without due process of law, or to take private property without just compensation."
> United States v Lee, 106 U.S. 196; 1 S. Ct. 240 (1882)

AND:

> "the courts must obey the constitution rather than the law-making department of government, and must, upon their own responsibility, determine whether, in any particular case, these limits have been passed."
> Mugler v. Kansa, 123 U.S. 623; 8 S. Ct. 273 (1887).

The Anti-Injunction Act is s statute under Title 26 U.S. Code which applies to "taxpayers", those persons subject to the tax or tax law. This does not apply to persons who are not "taxpayers" (as defined) and has no bearing in this case. Court of Appeals has constantly and continuously called Petitioner "taxpayer" without any fact(s) in law.

The fact that Petitioner had income does not make him a "taxpayer" in law, nor does seizing property under the guise of collecting a tax make Petitioner a "taxpayer"

> "Government action does not automatically become reasonably related to the achievement of a legitimate and substantial governmental purpose by mere assertion in the preamble of an ordinance."
> Bates v Little Rock 361 U.S. 516;80 S. Ct. 412; 4 L.Ed2d 480(1960)

The Internal Revenue Act, Section titled Individual Income tax is neither a tax upon Individuals (capitation) nor upon Income (property) as these are direct taxes. It is a tax upon a taxable activity, clearly and unambiguously defined in statute as to the activity subject to the tax.
The Anti-Injunction statute applies to such persons [taxpayers] and does not forbid suit by non-taxpayers.

IN RESPONSE TO QUESTION 3

Do inferior Courts have the authority to change, over-rule, or otherwise ignore what this Supreme Court has construed to be the subject of the individual income tax?

This court has construed that the taxing powers granted by the Constitution can reach most forms of income but must adhere to the restrictions set forth that direct taxes must be apportioned and indirect taxes must be uniform. The Sixteenth Amendment was held to create no new subjects of taxation and that it obviously was intended to clear up the idea that the income tax was in the class of indirect taxes to which it inherently belonged and to relieve all income taxes

when imposed from apportionment from consideration of the source whence the income is derived. *Brushaber v. Union Pacific R.R. CO.,240 U.S. 1,17,18* and "it was settled that the provisions of the Sixteenth amendment conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged...."*Stanton v Baltic Mining Co.,240 U.S. 103,112(1916)* other tax cases construed by this court that excise taxes are those upon certain activities and privileges and not upon people or property, as taxes upon either people (capitation) or property (including income as the subject of the tax) were direct taxes both before and after the Sixteenth Amendment still requiring apportionment.

The individual income tax, as exacted today, not being apportioned must therefore be an indirect excise tax.

However, an inferior court claims that the Sixteenth Amendment merely eliminates requirement that direct income tax be apportioned among the states.

Parker v Commissioner of Internal Revenue, 724 F.2d.469(5th Cir.1984)

In referring to Title 26 Sect 1. another inferior court states "Congress has constitutional authority to impose an income tax on individuals (a direct capitation tax) Statute (26 Sect 1) providing that there is hereby imposed on the taxable income of every individual a tax determined to in accordance with specified tables is statutory authority to impose an income tax on individuals. While the statute itself makes taxable income the subject of the tax, which being an excise would have to be from a taxable activity, it does not impose an income tax on the individual as the subject of the tax. A fatal error of that court.

On page 17 of the Brief for the Appellee, the government cites *Lovell v. United States* 755F.2d. 517,519

(7th Cir.1984)(stating that Constitution does not prohibit the imposition of a direct tax without apportionment);and *United States v. Buras*,633F.2d.1356,1361(9thCir.1980)(recognizing that that "the Sixteenth Amendment is broad
enough to grant Congress the power to collect an income tax regardless of the source of the taxpayers income");*Wilcox v. Commissioner*,848F.2d.1007,1008n.3(9thCir.1988)(concludin g that" income may be taxed without apportionment under the Sixteenth Amendment") and then went on to say "As shown by the foregoing, taxpayer's demand for Government's authority to tax a particular activity is meritless because the income tax applies to all income-generating activity." These cases are contrary and erroneous to what this court construes to be the subject of the income tax, the nature of the income tax, and what activities can be reached by the income tax.

This court through its Tax Cases has acknowledged three basic subjects of taxation 1. people, in the form of a capitation tax 2. Property both real and personal 3. activities, events, happenings. Subjects 1 and 2 are considered direct taxes required to be apportioned. 3 being an indirect excise tax laid upon the manufacture, sale or consumption of commodities within the country, upon licenses, to pursue certain occupations and upon corporate privileges, the requirement to pay such taxes involves the exercise of a privilege. *Flint v Stone Tracy Co.,* 220 U.S. 107;31 S. Ct. 342; 55 L.Ed 389(1911). Also in *Knowlton* "Direct taxes bear immediately upon persons, upon possessions and enjoyments of rights. Indirect taxes are levied upon the happening of an event or an exchange." AND: "In other words, the power to destroy which may be the consequence of taxation is a reason why the right to tax should be confined to the subjects which may be lawfully embraced therein, even although it happens that is some particular instance no great harm may be caused by the exercise of the taxing authority as to a subject which is

beyond its scope." *Knowlton v Moore, 178 U.S. 41 (1900)*(underline added).

Petitioner has a right to the fruits of his labor, to life, liberty. If the subject of the income tax is Petitioners enjoyment of a natural right to work and receive compensation for his labor, not withstanding Constitutional challenges, would, at best, be a direct tax upon property, requiring apportionment . Congress could have easily said in 26 Sect 1....there is hereby imposed on the income of ..[every individual]..." if income were the subject of the income tax and that would require apportionment according to this court. Rather, 26 Sect 1 says "There is hereby imposed on the taxable income of [every individual]....." clearly indicating that it is some condition making it taxable. The IRC (code) then defines taxable income as Gross income minus [taxpayer] deductions. Especially misleading since income, gross or otherwise, cannot be the subject of the tax without apportionment, which the income tax is not.

The *House Congressional Record, March 24, 1943, pg. 2580* says it like this: "The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax." AND: "All taxation is statutory, and, while it is the duty of every citizen to bear his just proportion of public expense, he cannot be compelled to do so except as provided by statute." *Schuck v Hartman*, 222Pa. 190; 70 A. 1091(1908). AND "Tax is a legal imposition, exclusively of statutory origin, and liability to taxation must be read in statute, or it does not exist. "*Bente v Bugbee*, 137A.552;103 N.J. Law.608 (1927).AND "Liability for taxation must clearly appear from statute imposing tax. "*Higley v Commissioner of Internal Revenue*, 68 F.2d.160 (1934).

"However, a reasonable construction of the taxing statutes does not include vesting any tax official with absolute power of assessment against individuals not specified in the statutes as persons liable for the tax without an opportunity for judicial review of this status before the appellation of "taxpayer" is bestowed upon them and their property is seized and sold. "*Botta v Scanlon*, 288 F.2d.504(1961).

In the cases cited by government as frivolous claims, the issue of whether the individual was a statutory "taxpayer" was never demanded of the courts. An essential element necessary for such status to be applied. Those courts proceeded with the mere assumption that those individuals were statutory "taxpayers" and the court nor the government not challenged as to their lawful and proper status.

While Petitioner does not make claim as to what the courts or government may or may not prescribe for a lawful "taxpayer". Petitioner believes the taxing statutes are not generic and that all individuals nor all income is taxable. If the mere receipt of income were a taxable activity then this court would have found it necessary to strike down the Income Tax Act of 1894 as unconstitutional as an unconstitutional application of the tax statutes, since the income received from property would have been a taxable activity/event.

CONCLUSION

Petitioner is denied due-process-of-law by action of government agents/officers whereby Petitioners property and rights to property where encumbered and seized without the benefit of a judicial hearing to determine statutory jurisdiction nor was a determination made by said government agents/officers, that petitioner was subject to or liable for the tax by an agent/officer.

Government believes all individuals are and all income is subject to income tax without a basis in statue for such a claim.

Government provides no administrative remedies for individuals who are not "taxpayers" as that term is defined in the tax code. Relief can not be found in Tax Court as it lacks jurisdiction over the question. Nor is relief to be found in the Taxpayers Bill of Rights as one must be a "taxpayer" for relief. When authority/jurisdiction is challenged, the burden of proof should be placed upon the government agency claiming authority to do a thing. Instead, the government and the courts believe that the one who challenges is automatically a "taxpayer", based on their say so, and is attempting to enjoin a tax, the action is dismissed for sovereign immunity. Due-process denied. Government makes no direct claim that Petitioner is a "taxpayer" as defined in code, but claims that if Petitioner has "income" there a tax is due. That "taxable income" is defined in code as [taxpayers] gross income minus[taxpayers] deductions. In order to be a "taxpayer" one must have "taxable income", to have "taxable income" one must be a taxpayer with gross income minus taxpayer deductions. Petitioner denies being a "taxpayer" as that term is strictly and narrowly defined in the tax code and has done so at each and every step of the governments' process. Petitioner believes that this court was correct when construing the Sixteenth Amendment confers no new powers of taxation, nor new subjects of taxation but merely affirmed that the so-called income tax is an indirect excise tax entitled to be enforced as such. That the federal courts inferior to this court have misconstrued the holdings, decisions, rulings of this court's landmark tax cases, causing the loss of basic and fundamental rights as guaranteed by the Constitution for such individuals. That inferior courts have come to believe that the Sixteenth Amendment gave a new taxing power to

government to tax income as the subject of the tax and without apportionment. This court has construed the Amendment to simply eliminate the need to consider the source of income when considering a "taxpayers" liability.

The government has overstepped the authority granted in the taxing statutes since one must be a "taxpayer" to be subject to the tax. Since the income tax is an excise tax entitled to be enforced as such, one must be involved in a revenue taxable activity, otherwise the subject of the tax would be Petitioner as a person (direct capitation tax) or his property (real or personal-including income) and either would be required to be apportioned. Not all activities are taxable, only those such as are clearly and unambiguously identified in statute. Petitioner believes this to be true because statutes are found identifying specific, revenue taxable activities and making those who are involved in such activities liable for the tax. Government agents/officers provide no evidence as to which revenue taxable activity it is assumed Petitioner was involved in making him liable for the tax. Government agents/officers opinions are not evidence. Petitioner has no moral or legal obligation to turn over property that he is not bound by statute so to do, under the guise and pretext of the application of a tax. Government is duty bound to make clear under what authority it proceeds and not to over reach its authority granted by statute. Petitioner does not voluntarily waive any Rights and Remedies he may have either knowingly or unknowingly. Any procedural or protocol errors or omissions shall be corrected when Sixth Amendment right of Assistance of Counsel is assigned, being they competent and effective counsel. The Sixth Amendment does not limit Assistance of Counsel to criminal cases, nor to indigent or Informa Pauperis, which would require the relinquishing of one right to secure another. The intent of Petitioner is honorable and forthright and prays that justice be served.

Gregory J. Everett, pro se

App. 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREGORY J. EVERETT
Plaintiff(s),

CASE NUMBER:00-72225
HON. DENISE PAGE HOOD

V.

UNITED STATES OF AMERICA,
Defendant(s).
_____/

NOTICE OF MOTION HEARING/1

You are hereby notified to appear before the Honorable Denise Page Hood, United States District Judge for the above proceeding on **October 2, 2000 at 10:00a.m.,** in **Room 237**, Theodore Levin U.S. Courthouse, 231 W. Lafayette Detroit, Michigan 48226. The following motion(s) are scheduled for hearing:

- Defendant's Motion to Dismiss, filed July 18, 2000.

CERTIFICATE OF MAILING

I certify that a copy of this notice was mailed to Gregory Everett and Elizabeth Lan, Esq. On this date August 15, 2000 by ordinary mail.

Date: August 15, 2000 "sWILLIAM F. LEWIS"

App. 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREGORY J. EVERETT
Plaintiff,

CASE NUMBER: 00-72225
HONORABLE VICTORIA A. ROBERTS

V.

UNITED STATES OF AMERICA,
Defendant.
_____/

ORDER

This matter is before the Court on the Motion of the United States of America to Dismiss [Doc. #6] the above-captioned proceeding. The United States asserts that it has not waived its sovereign immunity and also asserts that the Plaintiff's Complaint fails to state a claim upon which this Court may grant relief.

The Court has reviewed the submissions of the parties and has determined that both aspects of the United States of America's motion should be granted.

The hearing on the Defendant's Motion, scheduled for October 2, 2000 is canceled, as is the Scheduling Conference set for October 2, 2000.

Accordingly, IT IS ORDERED that the Plaintiff's Complaint is dismissed with prejudice, each party to bear its own fees and costs.

IT IS ORDERED.

Dated: SEP. 11,2000

"s**VICTORIA A. ROBERTS**"
UNITED STATES DISTRICT COURT

App. 3
No. 00-2159

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GREGORY J. EVERETT, Plaintiff-Appellant,	)	
v.	)	ORDER
UNITED STATES OF AMERICA, Defendant-Appellee,	)	

Before: JONE, SILER, and GILMAN, Circuit Judges.

Pro se Michigan resident Gregory J. Everett appeals a district court judgment that dismissed a civil complaint in which he attempted to enjoin the United States from collecting back taxes. The case has been referred to this panel pursuant to Rule 34(j)(l), Rules of the Sixth Circuit. We unanimously agree that oral argument is not needed. Fed. R. App. P. 34(a).

Everett sued the United States, asserting tax-protester claims that a notice of intent to levy served upon him by the Internal Revenue Service failed to charge him with being liable for a tax based on a statute. Essentially, he claimed that he was not a taxpayer and that the federal income tax was an unauthorized excise tax. The United States moved the district court to dismiss the suit: (1) for lack of jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(l), because the United States had not waived sovereign immunity; and (2) for failure to state a claim upon which relief may be granted, under Rule 12(b)(6).

The district court granted the United State's motion to dismiss, concluding that both asserted grounds for dismissal had merit.

In his timely appeal, Everett repeats his tax-protester arguments. The United States moves the court to impose a lump-sum sanction against Everett for prosecuting a frivolous appeal. Both parties have filed briefs.

Whether the district court properly dismissed this suit pursuant to Fed. R. Civ. P. 12(b)(l) for want of jurisdiction is a question of law subject to de novo review. *See Duncan v. Rolm Mil-Spec Computers,* 917 F.2d 261,263 (6th Cir. 1990). To survive a Rule 12(b)(l) motion, the plaintiff must prove that jurisdiction exists. *See id.*

The district court properly concluded that it lacked jurisdiction. Although federal district courts lack jurisdiction over actions seeking injunctions against the collection of taxes, 26 U.S.C. ~ 7421(a), the statute has narrow exceptions. In *Enochs v. Willliams Packing & Nav. Co.,* 370 U.S. 1, 6-7 (1962), the Supreme Court held that the statute is not applicable if the taxpayer was certain to succeed on the merits and could demonstrate that the collection would cause him irreparable harm. Although Everett has attempted to restrain the IRS from collecting taxes from his bank accounts, he makes no nonfivolous argument that would remotely suggest that he is not liable for the deficiency, and he has provided no evidence that the collection would cause him irreparable harm.

The district court's dismissal under Fed. R. Civ. P.12(b)(6) was also proper. This court reviews de novo a district court judgment dismissing s suit pursuant to Rule 12(b)(6). *See Sistruck v. City of Strongsville,* 99 F.3d 194, 197 (6th Cir. 1996). The court construes the complaint in the light most favorable to the plaintiff, accepts the complaint's factual allegations as true, and determines whether it is beyond a doubt that the plaintiff can prove no set of facts in

support of his claims that would entitle him to relief. *Id.* The challenged complaint must contain either direct or inferential allegations concerning all material elements necessary to sustain a recovery under some viable legal theory. *See Allard v. Weitzman (In re DeLorean Motor Co.),* 991 F.2d 1236,1240(6th Cir. 1993).

Everett asserts no viable legal theories. His contentions that he is not a taxpayer and that income tax is an unauthorized excise tax are legally frivolous. *See United States v. Mundt,* 29 F.3d 233,237 (6th Cir. 1994); *Martin v. Comm'r,* 756 F.2d 38, 40-41 (6th Cir. 1985)(concluding that the "not a taxpayer" and "unlawful excise tax" contentions are meritless and grounds for assessing sanctions); *Coleman v. Comm'r,* 791 F.2d 68, 72 (7th Cir. 1986)(describing the "unlawful excise tax" argument is frivolous, stale, and long "put to rest").

We grant the United State's motion for sanctions against Everett for filing this frivolous appeal. The government moved for sanctions in a timely manner, certified that Everett was served with the motion, and Everett has not responded. *See* Fed. R. App. P. 38 (requiring notice and an opportunity to respond). Tax protesters who assert frivolous claims may be legally assessed damages in the district court and on appeal. *See Schoffner v. Comm'r,* 812 F.2d 292, 294 (6th Cir. 1987). This court has indicated its disapproval of frivolous appeals in tax protester cases and its intention to impose Fed. R. Civ. P. 38 sanctions and award costs. *See Martin,* 756 F.2d at 41; *Perkins v. Comm'r,* 746 F.2d 1187, 1188-89 (6th Cir. 1984). An appeal is properly sanctioned as frivolous under 28 U.S.C. ~ 1912 and Rule 38 when the only issue raised has been clearly resolved against the appellant. *See Schoffner,* 812 F.2d at 293-94.

This appeal is frivolous under any of the applicable standards. The district court suit was bottomed on Everett's belief that he had legally outfoxed the IRS through legal

research and by citation to cases that support his belief that he is not required to pay taxes. Although his pleadings and his brief are peppered with evidence of his legal-research abilities, he has obviously ignored this court's stern warnings to litigants who champion the frivolous contentions he has raised. *See Martin,* 756 F.2d at 41; *Perkins,* 746 F.2d at 1188-89. Everett maintains his legal challenges on appeal.

The IRS has moved for sanctions to be awarded in the lump sum $4,000. The IRS has presented evidence that it costs $4,900—in attorney salaries and other expenses incurred by the Tax Division of the Department of Justice—to defend frivolous appeals. This court has approved lump-sum awards under Rule 38. *See Schoffner,* 812 F.2d at 294 (finding that a sanction of $1,200 was an appropriate award where the IRS Commissioner stated that $1,200 was the average award for the previous two years). A sister circuit has recently approved a $4,000 sanction in a case that mirrors Everett's. *See Stafford v. United States,* 208 F.3d 1177, 1179 (10th Cir. 2000). However, because Everett has not been identified as a persistent frivolous litigant, we feel that a sanction of $200.00 would be sufficient.

Accordingly, we grant the United State's motion for sanctions in the amount of $200.00, and we affirm the judgment of the district court. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
"s Leonard Green, Clerk"

Dated: May 18, 2000

App. 7

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

GREGORY J. EVERETT, Petitioner,	)	
v.	)	) Civil No. 00-72225
	)	) Hon. Denise Page
UNITED STATES OF AMERICA, Defendant,	)	Hood

MEMORANDUM OF LAW IN SUPPORT OF UNITED STATES' MOTION TO DISMISS

Defendant United States of America, by its undersigned counsel, submits this Memorandum Law in Support of United States' Motion to Dismiss in the above-captioned proceeding.

FACTS

The following facts may be obtained from the plaintiff's complaint. On April 24, 2000, the Internal Revenue Service issued a Notice of Levy to National City Bank, Columbus, Ohio, in the amount of $37,307,02, for unpaid federal income taxes, plus statutory additions, assessed against the plaintiff for the years 1987, 1988, 1989. (Att. To Pl. Complt.). Plaintiff's complaint appears to challenge the jurisdiction of the Internal Revenue Service to issue a Notice of Levy and seeks an injunction to enjoin the collection of the unpaid taxes pursuant to the Notice of Levy. (Pl. Complt., p. 1).

ARGUMENT

I. This Court Lacks Subject Matter Jurisdiction Because the United States' Has Not Waived Its Sovereign Immunity.

Rule 12(b)(l) of the Federal Rules of Civil Procedure provides that the Court may dismiss a complaint for lack of jurisdiction. See Fed. R. Civ. P. 12(b)(l). The burden of establishing subject matter jurisdiction of the court lies with the party seeking to invoke the court's jurisdiction, which in this case is the plaintiff. See Moir v. Greater Cleveland Reg'l Transit Auth., 895 F.2d 266, 269 (6th Cir. 1990); See also Rogers v. Stratton Indus., Inc., 798 F.2d 913, 915 (6th Cir. 1986).

The doctrine of sovereign immunity provides that the United States, as sovereign, is immune from suit except as it consents to be sued, whereby the terms of its consent define the court's jurisdiction. See, e.g., United States v. Dalm, 494 U.S. 596, 608, 110 S.Ct. 1361,1368,108 L.Ed.2d 548 (1990); Lehman v. Nakshian, 453 U.S. 156,160, 101 S.Ct. 2698, 2701, 69 L.Ed.2d 548 (1981); United States v. Testan, 424 U.S. 392,399,96 S.Ct. 948,953,47 L.Ed.2d 114 (1976); Fishburn v. Brown, 125 F.3d 979,981 (6th Cir. 1997); Ecclesiastical Order of the Ism of Am, Inc. v. Chasin, 845 F.2d 113, 115 (6th Cir. 1988). Any such consent cannot be implied but must be unequivocally expressed by Congress. See United States v. Nordic Village, Inc., 503 U.S. 30, 33-34, 112 S.Ct. 1011, 1014, 117 L.Ed.2d 181 (1992); see also Mitchell, 445 U.S. at 538; United States v. King, 395 U.S. 1,4,89 S.Ct. 1501, 1502,23 L.Ed.2d 52 (1969); Fishburn, 125 F.3d at 981.

Moreover, the waiver of sovereign immunity must be strictly construed in favor of the United States, and it is not the duty of the courts to enlarge or expand upon the limits of the waiver as expressed by Congress. See Library of

Congress v. Shaw, 478 U.S. 310, 318, 106 S.Ct. 2957, 2963,92 L.Ed.2d 250 (1986); See also State Bank of Coloma v. Nat'l Flood Ins. Co., 851 F.2d 817, 820 (6th Cir. 1988).

While the burden is on the plaintiff to establish that the United States has consented to suit, plaintiff has failed to do so in his complaint. See Whittle v. United States, 7 F.3d 1259,1292 (6th Cir. 1993). Plaintiff asserts that jurisdiction is found in the First, Fourth, and Fifth Amendments of the United States Constitution. (Pl. Complt., p.1) However, plaintiff fails to specify any facts which could arise to the level of a violation of any of these amendments.

Plaintiff also asserts that jurisdiction exists pursuant to the Anti-Injunction Act, which also does not waive the United States' sovereign immunity in the present situation. The Anti-Injunction Act provides that no suit for the purpose of restraining the assessment of collection of any tax shall be maintained in any court. See 26 U.S.C. ~ 7421. The primary purpose of the Anti-Injunction Act is to permit the United States to assess and collect taxes alleged to be due without judicial intervention. See Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7-8, 82 S.Ct. 1125, 1129,8 L.Ed.2d 292 (1962). The Act also serves to protect the collector from litigation pending a suit for refund. See Alexander v. "Americans United," Inc., 416 U.S. 752, 757-58, 94 S.Ct. 2053,2058,40 L.Ed.2d 518 (1974). The statutory exceptions to the Anti-Injunction Act are provided by 26 U.S.C. ~~ 6212, 6213, 6672, 6694, 7426, and 7429, none of which are applicable here. (The inapplicability of ~ 7426 in particular is discussed infra.)

A judicial exception to the Anti-Injunction Act exists if the plaintiff can show that: (1) under the most liberal view of the facts and law, the government cannot prevail on the merits, and (2) special circumstances indicate that the plaintiff does not have an adequate remedy at law. See Enochs, 370 U.S. at 7-8. The plaintiff has the burden to prove

that the government cannot prevail. See Commissioner v. Shapiro, 424 U.S. 614, 628 n. 10,96 S.Ct. 1062,1071,47 L.Ed.2d 278 (1978). Thus, to the extent plaintiff seeks injunction relief against the tax collection efforts of the Internal Revenue Service, the Anti-Injunction Act operates as a specific jurisdictional bar. See Flowers v. Commissioner, 573 F. Supp. 21,22 (W.D. Mich. 1983).

Here, plaintiff has not satisfied either of the elements to qualify for the judicial exception to the Anti-Injunction Act. Plaintiff's complaint does not address the merits of the government's case, but merely claims there is no evidence of the plaintiff being liable for, or subject to, a tax. (Pl. Complt., pp.2-3). Moreover, plaintiff's complaint fails to describe any special circumstances which indicate that the plaintiff does not have an adequate remedy at law. (1) Moreover, the opportunity to sue for a refund is an adequate remedy at law, which bars the granting of an injunction. (2) See Church of Scientology of California v. United States, 920 F.2d 1481, 1489 (9th Cir. 1990), cert. denied, 500 U.S. 952,111 S.Ct. 2258, 114 L.Ed.2d 711 (1991);

1. Plaintiff's reliance upon Miller v. Standard Nut Margarine Company, 284 U.S. 498, 52 S.Ct. 260, 76 L.Ed.422(1932) to support his claim that special and extraordinary circumstances exist for an injunction here, is misplaced. In Miller, and injunction was granted because the enforcement of the act providing for an oleomargarine tax against the defendant would "destroy its business, ruin it financially, and inflict loss for which it would have no remedy at law." Miller, 284 U.S. at 510-11. No such special and extraordinary circumstances exist in the present case.
2. Plaintiff's complaint does not seek a refund because he has not paid yet. Pursuant to Section 7422 of the Internal Revenue Code, a suit for refund cannot be maintained unless the claimant filed a refund with the

Internal Revenue Service. See 26 U.S.C. ~ 7422. To date, plaintiff has neither paid nor filed any such claim for refund.

see also Beerbower v. United States, No. 85-1034, 1986 WL 16750 at *2 (6th Cir. March 14,1986)(table); Flowers v. Commissioner, 573 F. Supp. 21, 22 (W.D. Mich. 1983). According, the exception to the Anti-Injunction Act does not apply to the present situation, and thus, there is no waiver of sovereign immunity.

While none of these statutory exceptions to the Anti-Injunction Act apply to the present situation, it should be noted that while 26 U.S.C. ~ 7426 provides a limited waiver of sovereign immunity by allowing third parties to contest an IRS levy when it interferes with its property rights, the person asserting the wrongful levy claim must not be the one against whom the tax is assessed. See 26 U.S.C. ~ 7426(a); see also McGinness v. United States, 90 F.3d 143, 145 (6th Cir. 1996). To establish a waiver of sovereign immunity under Section 7426 of the Internal Revenue Code, the plaintiff must show: (1) that the plaintiff is not the party against whom the tax is assessed; (2) that the plaintiff has a legally cognizable interest in the property; and (3) that the property was wrongfully levied upon. See McGinness, 90 F.3d at 145. Because the levy in this case relates to taxes assessed against the plaintiff, the plaintiff cannot maintain a wrongful levy action against the United States under 26 U.S.C. ~ 7426.

II. Plaintiff's Complaint Should be Dismissed for Failure to State a Claim Upon Which Relief May Be Granted.

Even if the Court finds subject matter jurisdiction to exist, plaintiff's complaint should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to

state a claim upon which relief may be granted. See Fed. R. Civ. P. 12(b)(6). A complaint will not be dismissed for failure to state a claim "unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957); see also Hisler v. City of Bowling Green, 42 F.3d 382, 383 (6th Cir. 1994), cert. denied, 514 U.S. 1120 (1995). In deciding a motion to dismiss, the allegations in the complaint are taken as true and viewed in the light most favorable to the plaintiff. See Hisler, 42 F.3d at 382.

Contrary to plaintiff's assertion in his complaint, plaintiff does incorporate a number of arguments which consistently have been rejected by the courts as frivolous. (Pl. Complt., p.9). Plaintiff appears to claim that he is not a taxpayer within the authority or jurisdiction of the Internal Revenue Service or the Internal Revenue Code, and thus he is not subject to the tax laws. (Pl. Complt., pp.3-5,11). Courts have consistently rejected this argument. See, e.g., United States v. Keys, No.92-3729, 1993 WL 101442 (6th Cir. April 6, 1993)(rejecting the "not a taxpayer" argument); Martin v. Commissioner, 756 F.2d 38,40 (6th Cir. 1985)(finding as baseless the argument that income tax is an excise tax for the claim that the individual was not a taxpayer within the meaning of the tax laws and did not fall under the jurisdiction of the Internal Revenue Service or the Tax Court); United States v. Sloan, 939 F.2d 499,501 (7th Cir. 1991)(rejecting the assertion that an individual was "not a taxpayer" subject to the tax laws as " sumply wrong"), cert. denied, 502 U.S. 1060, 112 S.Ct. 940, 117 L.Ed.2d 110 (1992).

Plaintiff's complaint also raises the frivolous arguments that income tax is an excise tax and that the Sixteenth Amendment is only limited to indirect taxes. (Pl. Complt., pp. 4-5, 8-11). Gross income means income from whatever source derived including compensation for services. See 26

U.S.C. ~ 61(a); see also Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 75 S.Ct. 473,99 L.Ed. 483(1955); Brushaber v. Union Pacific Railroad Co., 240 U.S. 1,12,36 S.Ct. 236,239,60 L.Ed. 493(1916); Perkins v. Commissioner, 746 F.2d 1187,1188 (6th Cir. 1984). Section 61(a) of the Internal Revenue Code is in full accordance with Congressional authority under the Sixteenth Amendment to the Constitution to impose taxes on income without apportionment among the states. See Perkins, 746 F.2d at 1188; see also Funk v. Commissioner, 687 F.2d 264,265 (8th Cir. 1992). With respect to income taxes, it is immaterial whether the tax is a direct or indirect tax. The purpose of the Sixteenth Amendment was to relieve all income taxes from apportionment and from a consideration of the source of the income was derived. See Abrams, 82 T.C. 403; see also Cheek v. United States, 498 U.S. 192,205,111 S.Ct. 605,612,112 L.Ed.2d 617 (1991); Brushaber, 240 U.S. at 12-19; United States v. Mundt, 29 F.3d 233,237 (6th Cir. 1994); Parker v. Commissioner, 80 T.C. 1111, 1120-21 (1983).

The plain language of the cases set forth above reveal that the positions taken by the plaintiff have consistently been found by the courts as frivolous and without merit. Thus, the plaintiff has failed to set forth a valid claim upon which relief may be granted, and plaintiff's complaint should be dismissed accordingly.

CONCLUSION

For the reasons set forth herein, the United States' Motion to Dismiss Plaintiff's complaint should be granted.

"s SAUL A. GREEN"
United States Attorney

"sELIZABETH LAN"
Trial Attorney, Tax Division/

"sELIZABETH J. LARIN"
Assistant U.S. Attorney

App. 14
No. 00-2159

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GREGORY J. EVERETT, Plaintiff-Appellant,	)	
v.	)	ORDER
UNITED STATES OF AMERICA, Defendant-Appellee,	)	

Before: JONE, SILER, and GILMAN, Circuit Judges.

Pro se Michigan resident Gregory J. Everett petitions the panel to rehear its May 18,2001, order that affirmed the dismissal of his civil suit.

Upon consideration, we conclude that we did not misapprehend or overlook any point of law or fact in affirming the district court's judgment. *See* Fed. R. App. P. 40(a).

We DENY Everett's petition for rehearing.

ENTERED BY ORDER OF THE COURT
"sLeonard Green, Clerk"

App. 15

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

Gregory J. Everett

v.

United States of America

Notice

(By Special Appearance only)
Re: Challenge of jurisdiction of Internal Revenue Service and Notice Of Levy, and Suggested dismissal of Levy by Court's own motion and 6th Amendment right to Assistance of Counsel

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PLEASE TAKE NOTICE

The above named, Gregory J. Everett, as improperly designated "taxpayer", seeks the courts own motion for an injunction to enjoin the collection of unauthorized excise tax under the guise of the so-called income tax, as claimed in the attached Notice of Levy. I am not within the purview of the Internal Revenue Code and the Internal Revenue Service is without jurisdiction, either subject matter or my person, to lay claim to my property or any rights thereof. This courts jurisdiction is found in the Constitution of the United States of America in protecting against search and seizure in common law and equity jurisprudence of the fourth amendment and compliance with due process of law as found in the Constitution, fifth amendment and the right to petition the government for the redress of grievances, first

amendment. Also in the Supreme Court case of *Miller v. Nut Margarine Co.* a suit to restrain the collection of a tax within the meaning of R.S. 3224 (Anti-Injunction Act, 26 U.S.C. 7421) and not a suit to collect a penalty. As there exists special and extraordinary circumstances to bring this case within some acknowledged head of equity jurisprudence. Take consideration of the following:

1. The invalidity of the so-called Notice to Levy in the above titled matter.
2. This Notice and suggested motion of the court, has been prepared without the assistance of counsel, and is subject to whatever corrections are found necessary if and when appointed counsel so recommends. Therefor, the authority which is presently invoked for this motion is the inherent power of this court to do justice, and also Federal Civil Procedures Rule 60(a) and 65(b)..

FACTS

Internal Revenue Service issued a so-called Notice of Levy to several accounts of mine and of my wife, without statutory support for being liable for a tax.

The Notice of Levy (dated 4/24/00) was held 10 days prior to mailing to me on May 4, 2000. See attached.

Section 6331(a) Authority of Secretary states "Any person liable to pay any tax....." a straight forward English interpretation would lead one to understand that ANY PERSON LIABLE does not mean ALL persons are, or Every person is liable to pay OR that any particular person is liable to pay a tax. There are no stated facts charging me with being liable to or liable for the tax in this form called a Notice of Levy or any previous sent forms. The so-called Notice of Levy and previous forms, uses words: "taxpayer",

"tax owed", "amount owed", "if liable to" "taxable income", "taxable year" "gross income" "obligated to pay" "required by law" which are mere conclusions of law and stripped of these legal conclusions, there are no stated facts charging me with being liable for a tax based on statute. This requires the courts intervention until such evidence of being liable for the tax is clearly stated in law. If the Internal Revenue Service has no competent evidence, then it has no right to proceed against me or my property and permanent relief given. My challenge to jurisdiction involves the fact that I am without the purview of the Internal Revenue Code, much less within the purview of Section 6331(a).

The Supreme court stated in *Miller v. Nut Margarine Co. 284 U.S.498(1932)* that tax laws are to be interpreted liberally in favor of taxpayers; words defining things to be taxed may not be extended beyond their clear import; doubts must be resolved against the government and in favor of the taxpayer, also, the other equitable principle which permits suit to restrain collection where not only is the exaction illegal (wrong amount) but there exist special and extraordinary circumstances sufficient to bring the case within some acknowledged head of equity jurisprudence. In this case, the Internal Revenue has failed to present any factual basis whatsoever to support any legal conclusion of a taxable event, or any tax liability , or that I am in anyway subject to the tax at all, and therefore, without jurisdiction. Any and all notices previously sent to me, where answered immediately and challenged the authority and jurisdiction of the Internal Revenue Service to proceed against me. The authority and jurisdiction were never stated in fact or law. All inquiries were ignored. This is grounds alone for the courts to intervene and dismiss any claims the government might have against me. By no response, they have all aquiesed to the lack of jurisdiction.

For any competent attorney to understand the jurisdictional objection, he must be thoroughly familiar with the Supreme Court's unanimous rulings in *Brushaber v. Union Pacific R.R. Co.,240 U.S. 1(1916); Stanton v. Baltic Mining Co..,240 U.S. 103,112(1016);* and *Flint v. Stone Tracey Co., 220U.S. 107(1911).*

Brushaber and *Stanton* held that the Sixteenth Amendment as *correctly interpreted*, said the so-called "income" tax is constitutional because they are restricted to the classification of indirect taxes. Flint instructs that indirect taxes are never upon any kind of property, money or otherwise, but only upon activities in which the resulting income is merely referred to for the purpose of measuring the tax on the taxed activity. And "income" taxes, so-called, are only named such because the income connected with the taxed activity is simply and conveniently used as the standard or yardstick by which the tax upon the taxed activity is measured.

> The income tax is, therefore, not a tax on income as such. It is and excises tax with respect to certain activities and privileges, which is measured by reference to the income, which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax. *House Congressional Record, March 27, 1943, page 2580*

Having "income" does not automatically make one liable for a tax, since income is not the subject of the tax. Of course, under Internal Revenue Code, an activity must be taxable for revenue purposes, as opposed to regulatory purposes.

Since capitation and property are in the category of direct taxes which must still be apportioned among the States (*Stewart Machine CO.v. Davis, 301U.S.548,581-582(1937); and Penn Mutual Indemnity Co. v. C.I.R..,227Fd.16,19-20(3rd*

Cir 1960), neither people nor property (including income) are the *subject* of any present day Federal tax.

The so-called Notice of Levy, fails to allege any ***subject*** of any tax and most certainly fails to allege any activity taxed for revenue purposes, and should be dismissed. One must be involved in a taxable activity to be liable for a tax and "Liability for taxation must clearly appear from statute imposing tax"*(Higley v. C.I.R.,69F.2d160 1934).*

The entire Internal Revenue Code is applicable to one type individual by definition, the "taxpayer". Sections 7701 (14) and 1313(b) define the "taxpayer" as a person who is subject to any Internal Revenue tax or law. The above cited Supreme Court rulings clarify that the subject of the "income" tax is not people or property (including income) but are indirect excise taxes upon certain activitities and privileges. Then one must be involved in a revenue taxable activity to be subject to a revenue tax or law. Section 5005.

Clearly states what activity and who is liable for the tax.

> Section 5005 Persons liable for tax
> a) General
> The distiller or importer of distilled spirits is liable for the taxes imposed thereon by section 5001(a)(1)

The code is capable and does name what activity is taxable and makes one liable for the tax. There are several other sections naming specifically what activity is taxable and who is liable for that tax.

> Tax officials are not vested with absolute power of assessment against individuals not specified in statutes as persons liable for tax without opportunity for judicial review of status before persons' property is seized and sold, and same is true where liability is

asserted as penalty for willful act.26 U.S.C.A.(I.R.C.1954)
Botta v. Scanlon 288F.2d504(1961)

AND:

They [the revenue laws] relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. [Id.281Fat238]

AND:

Persons *who are not taxpayers* are not within the system an can obtain no benefit by following procedures prescribed for taxpayers,

ALSO:

Footnote #3. The term "taxpayer" in this opinion is used in the strict and narrow sense contemplated by the Internal Revenue Code and means a person who pays, overpays, or is subject to pay his own personal income tax. (See Section 7701(a) of the Internal Revenue Code of 1954). A "nontaxpayer" is a person who does not possess the forgoing requisites of taxpayer.
Economy Plumbing and Heating v. U.S. 470 F.2d585(1972)

I have only engaged in lawful, innocent and harmless means of living. In *Pollock v. Farmers' Loan and Trust Co. 157U.S.429 pg 589* "As stated, the rents and income of real property are included in the designation of direct taxes as part of the real property. Such has been the law in England for centuries, and in this country from early settlement of the colonies; and it is strange that any member of the legal profession should, at this day, question a doctrine which has always been thus accepted by common-law lawyers," AND

pg. 592 "The law, so far as it imposes a tax upon land by taxation of the rents and income thereof, must therefor fail, as it does not follow the rule of apportionment .The Constitution is imperative in it's directions on this subject, and admits of no departure from them." Still standing case law as *Pollock* has not been overturned.

Claiming all and waiving none of my God given rights and those guaranteed protection under the Constitution, either knowingly or unknowingly. It is known by men, that those rights conferred on the Federal government were those rights belonging to the States and the people and conferred only those as enumerated in the Constitution. The rest remaining with the States and the People.

The Supreme Court of Oregon stated that the "Individual, unlike corporations, cannot be taxed for the mere privileges of existing and owning property, which are natural rights."

The Tennessee Supreme Court said it this way;" Legislature can name any privilege a taxable privilege and tax it by means other than an income tax, but legislature cannot name something to be a taxable privilege unless it is first a privilege. Const. Art 2, 28 AND "Right to receive income or earnings is right belonging to every person, and realization and receipt of income is therefore not a "privilege" that can be taxed Const.2, 28. *Redfield v. Fisher, 292P.813 (1930) and Jack Cole Co. v MacFarland 337S.W.2d453(1960)*

The States did not have the power to tax the lawful, innocent, and harmless right of the acquiring of property, could they pass along to the federal government what they did not possess in the first place! I think not.

The U.S. Supreme Court stated "The power to tax the exercise of a privilege is the power to control or suppress its enjoyment" although this case is regarding the exercise of first amendment rights, so aptly said "A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution" AND "The power to impose a license

tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down. "*Murdock v. Pennsylvania319U.S.105(1943)*

If the government has no power to tax the rights of speech and religion then surely the most basic right to behold the fruits of ones labor is no more subject to the same. Congress has operated by this understanding and has written the tax code accordingly, stating which activities are taxable for revenue purposes in statute.

I have sent 20 letters just in the past 11 months, to the Revenue Officer, District Director-Michigan, Division Chief-Cincinnatti, Document Disclosure Officer, F.O.I.A. Requests, asking/requesting/demanding to see a copy of the record of a determination that the title "taxpayer" applies to me, what activity the I was presumed to be involved in that is a taxable activity, and which statute specifically applies to me naming such events or activities, taxable for revenue purposes. To date no response has been forthcoming to these queries. Even though Section 6021 requires the Secretary to make inquiries, determinations, assessments with regard to all taxes imposed by this title.(Title 26 Section 6021). No one within the Internal Revenue Service feels compelled to provide a statute or determination that their authority exists. Once jurisdiction has been challenged the government cannot proceed without supporting a claim of such jurisdiction with statute and facts, the action of the agency is a nullity. *Maine v. Thiboutot100S.Ct.250,; Brooks v. Yawkey 200 F.2d633,; Mcnutt v. G.M.,56S.Ct789,80L.Ed1135,;Griffen v. Matthews, 310 Supp.341423,F.2d272,;Sheilds v. UthanIdaho Central R.R.Co.,305 U.S. 177-187,83 L.Ed.111,495F.2d 906,;Albrect v. U.S..,273 U.S.1.*

Invoking this injunction does not strike down the Internal Revenue Code, absolutely not, to the contrary, it insures that the code is applied as it was written and intended by, the United States Congress in accordance with the Constitution.

Just as *Miranda* did not strike down the criminal code, but assured that applying the code is done without being in conflict or denying of Constitutionally protected rights. . Remember that the United States of America became the most industrialized, technologically advanced, military world power, as well as moral and social conscious leaders of freedom through-out the world, prior to the enactment of the so-called "income" tax.

The argument that the Sixteenth Amendment changed the subject of taxation is an erroneous argument. A correct and competent understanding of the intent of Congress (as held by the Supreme Court in *Brushaber and Stanton v. Baltic Mining) was* to prevent the "income" tax from being taken out of the classification of indirect tax (excise), to which it inherently belongs, and the source of the income is not to be considered when it is taxable (activity) income (see pg. 112 bottom *Stanton).* The Congress and Supreme Court acknowledge three subjects of taxation of which everything falls under: people, property (both direct), and activities (indirect-excise). The Sixteenth Amendment doesn't mention a subject of taxation and if one believes it to be "income", you are in conflict with the Supreme Court and the U.S. Congress. Also, an Amendment to the Constitution is not statute or code, but gives the authority to create such within its guidelines. Which the U.S. Congress did in several sections of Internal Revenue Code, specifically naming the taxable activity and those persons liable for the tax imposed.

Take notice that I do not use frivolous protester type arguments. I respect the authority given in Article 1 sect 8 giving the Federal government the power to tax. That the power is not absolute and comes with restrictions as to how taxes can be applied. The Sixteenth Amendment did not change those restrictions, but rather, reinforced their existence.

Subjects (people and property) of direct taxes must still be apportioned and subjects (activity) of indirect (so-called "income tax being one of them) taxes must be uniform and BOTH classes must properly adhere to the restrictions.

Likewise, this court should not entertain any frivolous argument that I have filed returns, or paid taxes in the past. showing a known duty. Such actions do not constitute nor substitute for code. These actions performed under misdirection, misinformation, coercion, duress and fraud are only primie facie evidence at best and without law.

This Notice and request for courts' own motion for injunction fail. I maintain the right to represent myself and request the court appoint the assistance of counsel as literally guaranteed in the sixth amendment. The due process of law includes the assistance of meaningful and effective counsel and requires the guiding hand of counsel in each and every step of the way, including correcting any defects within this Notice and request, in this special and extraordinary circumstance of such a financially and formidable opponent as the USA.

CONCLUSION

The Internal Revenue Code is written for and applies to "taxpayers", as that term is strictly and narrowly defined in the same. The Supreme court held that to be subject to a tax one must be involved in a revenue taxable activity. The authority for naming it such, must appear clearly in statute.

The Internal Revenue Service has repeated refused to state facts supporting that I was/am involved in any revenue taxable activity, liable for or subject to the tax, citing only the Sixteenth amendment as authority to tax "income". The Supreme Court held that the sixteenth amendment did not change or add any new subject of taxation, but rather restricted the so-called "income" tax to the classification of indirect tax. Again holding that indirect taxes are not upon people or property, but upon certain activities and privileges.

Earning a living through lawful, harmless, and innocent activities, not being among them, as would need to be clearly stated in statute. A careful reading of the IRC shows that each section relating to tax imposed or requirement to file or keep records, applies specifically to "taxpayers" directly or refers you to other sections that shows that "taxpayer" is the persons to which it gives authority over.

Petitioner is not a "taxpayer" as defined in the code, is therefore not within its (code) jurisdiction or purview and as such has no remedy or relief within the code.

I pray that this court give permanent injunction on my behalf, against the Internal Revenue Service, to stop all liens, levies and other collection type actions, that may interfere or deny my rights to my property, until such time they can support their claims with facts and law.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my ability.

Executed on May 16, 2000 at Warren, Michigan 48091

_____

Gregory J Everett

App. 26

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

GREGORY J. EVERETT,
Petitioner, By Special Appearance only.

v. Civil No. 00-72225
Hon. Denise Page Hood

UNITED STATES OF AMERICA,
Defendant,

Requesting for sixth amendment right of assistance of counsel

Let it be known that the petitioner, Gregory J. Everett, does not wish to knowing or unknowing relinquish an God given rights and especially those enumerated in the Constitution of the United States of America. Petitioner wishes to exercise any and all rights with regard to the rights of property ownership and those rights of due process without encumbering them in anyway.

In the original petition, the request was made for the Assistance of Counsel, as literally guarantee in the sixth amendment to the Constitution, should the court feel a need to continue further in this matter. The petitioner is not a professional lawyer nor counselor of law and wishes to preserve any and all remedies and appeals should he not prevail at the appointed hearing. Not wanting to risk improper jurisprudence and protocol, petitioner requests that

Assistance of Counsel, by competent and knowledgeable person(s) be appointed prior to any further actions.

The Constitution provides for the defense of one's own right's AND the right to Assistance of Counsel. Petitioner maintain he is being unlawfully deprived of his Constitutional rights by an agency of the government, through no action of his own, and has no remedy but to file a petition to this court to correct such unlawful actions.

The authority for this court to so order Assistance of Counsel lies in its duty to administer justice and the Sixth Amendment.

As stated in the original petition, This Notice is prepared without the assistance of counsel and is subject to whatever corrections are found necessary if and when newly appointed counsel so recommends. This appointment would satisfy the right to defend and present oneself in court and the ability to protect ones right with the Assistance of competent & effective counsel.

Petitioner does not have access to the vast resources that the government possesses and must depend upon this court to do justice in appointing assistance of counsel prior to any further actions.

Praying justice be done.

Gregory J. Everett
Petitioner
Aug. 25,2000

A SMALL SAMPLE OF LETTERS TO INTERNAL REVENUE SERVICE

Internal Revenue Service
985 Michigan Ave.
Detroit, Michigan 48226-1129
Cert: 7000 0520 0013 2657 1616

Sept. 9, 2000

Disclosure Officer
Joanne L. Wiegand
12-08037

Dear Ms. Wiegand;

In response to your letter dated Aug 29, 2000 I may have not been explicit enough in my request for the determination made in regard to me being a **"taxpayer"** as that term is narrowly and specifically defined in the Internal Revenue Code.

I am not looking for determinations by the Secretary on rulings, policies, etc.

But more specifically the determination that was made specifically with regard to when, how, and by whom the determination was made that **I, Gregory Joe Everett** am **subject to** or **liable for** the so-called income tax.

If the records reflect that this determination in not available, was not made, is not required to be made, or any other way not available. Please inform me with specific details.

If the producing of a copy of this record is necessary under the Privacy Act as opposed to the Freedom of Information Act, consider this request as made pursuant to both acts.

Please expedite this request as soon as possible.

I state that I am the person so named in the request under penalty of perjury.

Awaiting your earliest possible reply, I remain.

Sincerely,

Gregory Joe Everett

NO ANSWER RECEIVED

Internal Revenue Service
22600 Hall Rd. Suite 102
Clinton Twp., Michigan 48036

March 27, 2000
Cert Z 506 030 820

Attention M. Gonzales
Re: Collection Information

Dear M. Gonzales;

I am sending this letter to inform you that I will cooperate with your need for collection information. This has been my position all along (since 1985). I will need your cooperation in making sure that I am subject to the taxes in question.
Section 6201(a) of the IRC states that the Secretary is **required** to make the inquiries, **determinations,** and assessments of all taxes imposed by this title.
If you are the person designated to make the 1. Inquiries, 2. Determinations, 3. Assessments of all taxes imposed by this title. Please forward a copy of the record authorizing you personally to make those inquiries, determinations, and assessments. If it is your supervisor, please ask him/her to give a copy of the record authorizing them to make such decisions. This is not a request for decisions on a tax liability, No, make sure it is the authorization to make the inquiries, determinations, and assessments of all taxes imposed by this title. (Sect. 6201(a).
If your direct supervisor is not the person authorized to make the decisions that are **required** to be made under Section 6201(a). Then it will be necessary to find out who that person is, send me a copy of the record of the inquiries and determinations, with that individuals signature on the record. Stating how they came to make inquiries and determinations and the necessary statute and regulation supporting such.
Do you think it not fair that I offer to give you very private and personal information without at least having an

opportunity to see the determination that was **required** to be made, that alleges me **subject to** those taxes and how such determinations was made? I would think that kind of information or records should be able to found within a few minutes or a few hours at most. Since this is the very basis of law that you are relying on to take my property!

Be careful not to leave yourself open to a Bivens-type suit that would make you personally liable for actions you take against a citizen, that does not have a basis and authority in statute. Saying your boss told you to do it, won't shift the liability to the IRS from you personally. If your boss tells you to proceed, know that it is your responsibility to know he has the authority to so based in law.

Remember, having an alleged tax liability and being **liable for** a tax are two completely different things. One cannot have a tax liability unless and until, one is **liable for** the tax in the first place.

As soon as we can clear this up (copy of the records of determinations), the sooner I can forward the information you seek, if required.

Awaiting your earliest possible reply, I remain,

Gregory J. Everett,
24609 Eureka,
Warren, Michigan 48091

NO ANSWER RECEIVED

Chief of Collections
Cincinnati, Ohio

March 27, 2000
Cert. P 607 075 436

Re: violations of Section 6201(a)

Dear Chief of Collections;

I am forwarding a copy of a letter I sent to Officer M. Gonzales, in the Mt. Clemens, Michigan branch, after Officer Gonzales showed up on my property requesting collection information.

I assured her in the letter that I would cooperate with her request just as soon as the IRS forwards a copy of the record , that is **required** to be made in section 6201(a) by the Secretary. Which states that the Secretary is **required** to make to inquirers, determinations, and assessments of **all** taxes **imposed** by this title.

Including, but not limited to, the statute that makes me **subject to** the taxes **imposed** by this title, who made such **determination,** where did they get the authority to make that **determination**, and what "taxable activity" was I allegedly involved in, to be **subject to** that tax?

I have made 5 FOIA requests for these records, of which the disclosure officer doesn't know of such records.

Am I **subject to or liable for** any tax imposed by the IRC without a **determination** made that I am such an individual? A determination that is imposed upon the Secretary by requirement!

If you have the requested information regarding the inquiries, determinations, and assessments on ALL taxes imposed by this title, please forward copies of all records pertaining to this information.

If not, please ask the Officer on what authority she is proceeding against my property. Please forward her responses. Officer Gonzales made it clear that she is following orders, please forward a copy of the records supporting the authority of her supervisors, that may have made such inquiries and determinations, and cite the statutes and regulations supporting their authority, as well as copies of their determinations with their signatures on it.

Awaiting your earliest possible reply, I remain,

Sincerely,

Gregory J. Everett
24609 Eureka
Warren, Michigan 48091

P.S. Time is of the essence. If the inquiries and determinations were not on record making me SUBJECT TO the taxes imposed, then would the returns and liens be invalid? If affirmative, then it would be a grave injustice to proceed against ones property with invalid and fraudulent liens, wouldn't it?

NO ANSWER RECEIVED

Internal Revenue Service
22600 Hall Rd.
Clinton Twp. Michigan 48036

March 7, 2000

Attn: M. Gonzales
Re: Letter from District Director

Dear M. Gonzales;

In response to your fax dated 3/7/2000 the copy of former Michigan Director Arlene Kay, is valid and correct as you say. For that reason and the following support, you have no legal authority to proceed.

Ms. Kay stated that the Sixteenth Amendment authorized Congress to impose an income tax. That is incorrect, the original Constitution authorized congress to lay and collect taxes. The Sixteenth Amendment was an attempt to make it look like "income" could be taxed directly without "apportionment ". However, no less than two standing Supreme Court decisions state otherwise and Congress has gone on record as stating that the income tax is not on the income but rather on the "taxable" activity that produced the income. So the "subject of" the taxation is a "taxable" activity. I have never challenged the constitutionally of taxation nor have I challenged the constitutionally of homicide laws. But, if those laws are unconstitutionally applied towards me, I will demand to know the specific law that I am subject to and what specifically I did or did not do to come under it's authority.

Look in sections 1313(b) the term "taxpayer" means any person "subject to" a tax under the applicable revenue law...and section 7701(14) The term "taxpayer" means any

person "subject to" any internal revenue tax. These sections do not make me a "taxpayer" they only describe a "taxpayer". Where is the section that makes me a "taxpayer"? Where is the record of that determination? See section 1313 for definition of determination.

In paragraph three, Ms. Kay cited section 6012(a)(1)(A) Every individual having for the "taxable year" gross income which equals...."to see that this does not apply to me, we go to section 441(a) Computation of "taxable income" Taxable income shall be computed on the basis of the "taxpayers taxable year" AND taxable year is defined as (441(b)(1) The "taxpayers" annual accounting period....". I am not a "taxpayer" as that term is strictly and narrowly defined. Document Disclosure cannot produce the record of such "determination". Therefor, section 6012 Person required to make returns of income, does not apply to me.

Ms. Kay cited 6061 Signing of returns and other documents....Except as otherwise provided by sections 6062 and 6063, any return, statement, or other document **"required"** to be made under any provision....." This section does not make it a requirement for those who are not "taxpayers" as that term is strictly and narrowly defined, only for those who are "taxpayers", of which I am not.

Ms. Kay cited section 6201(a) and the cross-reference regulation 301-6201-1(a) as the statute and regulation that authorize the assessment of taxes. Section 6201 Assessment authority.

> (a) The Secretary is authorized and **"required"** to make the inquires, **determinations,** and assessments of all taxes....."

This means that the Secretary cannot pick and chose which of the above to do, but is **"required"** (that means has to) to do all three distinct steps. Where is the **determination** that I am subject to OR was/am involved in a "taxable activity" for the years in question? Without such record of a

determination based in statute and implementing regulation, there is no authority to proceed.

In the last paragraph, Ms. Kay stated that the federal court has settled the issues that I raised and that is correct. However, her responses has nothing to do with the issues that I have raised. The issues I presented have been settled by the federal courts, including the Supreme Court of the United States of America. It is in violation of the Constitutional right to "due process" and the constitutional limitations set upon direct and indirect taxation, that you are without authority to proceed against me.

Ms. Gonzales, if you doubt what I tell you, then ask your employer to cite the section that makes me "subject to" an internal revenue tax. Yes, "taxpayers" are "subject to" the taxes and there are sections that define who they are and what activity makes them such. I can assure you, that from the IRC and it's implementing regulations that I have not and am not involved in any taxable activity. I am not a "taxpayer" as that termed is defined in the IRC and in the *Economy case.* Your employer will not/can not give you such a section, it does not exist as far as I can tell. The Constitution, the Congress, Supreme Court and Federal courts have decided that the Internal Revenue Code applies "only" to "taxpayers" and in order to be a "taxpayer" one must be involved in a "revenue taxable activity" because it is the activity that is taxed, not the money itself (the Constitution doesn't allow that without apportionment, the 16th amendment did not change that, read the two standing Supreme Court decisions regarding such) I am not involved nor have I been involved in a "taxable activity" and am therefore not a "taxpayer" as that term is strictly and narrowly defined in the IRC. No determination has ever been made to that effect, without which you have no authority to proceed against me. Especially, based on false and fraudulent returns that may have been filed for the times in question.

Now that you agree that what Ms. Kay cited in code and regulation, is correct and valid, I expect a letter stating that I am not "subject to" a revenue tax, and not required to file a return, and any and all assessments are without merit, and all liens and levies removed immediately.

Ms. Gonzales, please be aware that if you proceed without the statues and implementing regulations to refute what I have explained, which you agreed are valid and correct. That no court will excluden you from personal liability, in purposely violating the very Constitutional rights you swore to protect and uphold. If you believe that there is a statute and implementing regulation allowing you to proceed, than I demand you forward it as soon as possible. Please keep in mind, that I must first be "subject to", a "taxpayer", before any of the sections or regulations have any authority applying to me.

Awaiting your earliest possible reply, I remain.

Sincerely,

Gregory J. Everett

NO ANSWER RECEIVED

Internal Revenue Service
Michigan District
P.O. Box 330500-Stop 11
Detroit, Michigan 48232-6500

December 22, 1999
Cert: P 607 075 418

Attention R. Suchyta
Re: F.O.I.A. Request

Dear Mr. Suchyta;

I am rather surprised at your statement, in the letter dated December 15, 1999, that you and the Internal Revenue Service put forth that "it is not the policy" to make sure that there is proper and lawful "enforcement of the Internal Revenue Code." And "Therefor, we will not answer future letters on these issues regarding the above tax accounts." I was under the impression that EVERY federal employee takes an oath of office to protect the Constitution to the United States, which includes the bill of rights (to protect each individuals rights) AND above all make sure that all laws are carried out in a lawful and constitutional manner.

You cited regulation 301.6203-1 stating "These represent a valid record of assessment...by setting forth taxpayer name, taxable period, assessment date, assessed amounts, and character of the assessment." And you would be correct in determining a taxpayers tax liability. However, what I requested was the determination that make me subject to the tax in the first place. In other words, someone had to determine that I was a taxpayer, as that term is strictly and narrowly defined in the code, in the first place. That would be a matter of record, not a matter of interpretation.

I therefor, demand:

A copy of the record setting forth the determination that I am a taxpayer for the years in question and who made such a determination OR the acknowledgement that such a record does not exist.

As with all codes and statutes, they must specifically apply and be spelled out, so that a person of average intelligence can determine if the law applies to them. Not arbitrarily, but specifically. With clarity. If you believe that the Internal Revenue Code does not need to comply with the Constitution and the laws set forth in such. Please state your reasons for believing such and cite the codes and regulations to support the same. This request is to be considered to be made under the Freedom of Information Act as stated in the original request dated Dec. 4, 1999.

You also stated in paragraph 4, that you enclosed a copy of the August 1993 lien. However, I have not seen a copy of the alleged lien, only a copy of the Notice of Lien.

I requested a copy of the lien as filed in Washington D.C. by the IRS and no such lien has been recorded.

I therefor demand:

A copy of the lien stating the lawful authority for such a lien and the signature of any persons authorizing a lien against myself or any property OR furnish a statement that no such lien exists.

These requests are strictly the lawful matters of record and supplying a copy of each should ve a very simple matter of copying and forwarding. Unless, no such records or documents exist, in which case I demand a written statement to that effect.

Awaiting your earliest possible reply, I remain,

Sincerely, Gregory J. Everett **NO ANSWER RECEIVED**

Internal Revenue Service
Michigan District
P.O. Box 330500-Stop 11
Detroit, Michigan 48232-6500
Case Control Number: 2000-411
Person Contact: Rosemary O. Marcin

December 15, 1999

Dear Mr. Everett:

This is in response to your Freedom of Information Act request dated December 4, 1999, and received in our office December 8, 1999. We have located four pages of documents responsive to your request, and are releasing them to you. Enclosed are literal transcripts from the Individual Master File (IMF) for tax year(s) 1987,1988 and 1989 consisting of 3 pages. These represent a valid copy of the record of assessment under Regulation 301.6203-1 by setting forth taxpayer name, taxable period, assessment date, assessed amounts, and character of the assessment. We are also enclosing a copy of the August 1993 lien filed for the above liabilities. On February 2, 1998 we mailed you complete copies of your 1987,1988 and 1989 administrative files. Information you are requesting would have been contained in those files. There have not been any further adjustments on those accounts. It is not the policy of the Internal Revenue Service to engage in correspondence regarding the interpretation and enforcement of the Internal Revenue Code. Therefore, we will not answer future letters on these issues regarding the above tax accounts. To the extent the records you have requested are available in the Michigan District, this constitutes a grant of your request. We are providing Notice 393, which explains the Freedom of Information Act appeal rights.

Sincerely,
"sRalph J. Suchyta" / Disclosure Officer

Internal Revenue Service
Service Center P.O. Box 69
Bensalem, PA. 19020

November 19,1999
Cert: Z 506 030 818

Director: Deborah Reilly

Dear Ms. Reilly;

In response to your letter with no date (rec. 11/18/99) I have but *two* very simple LAW Questions. They DO NOT concern "taxpayers" and the "requirement to file a federal income tax return" as you stated incorrectly in the first paragraph. IN FACT, I have never questioned or doubted a "taxpayers" (as that term is defined in the IRC) "requirement to file returns or pay taxes" even in two letters to me, you have miss stated this point, after being corrected and asked very specific law questions that were on point.

As you correctly stated, "The jurisdiction of the IRS is *limited to* the administration of the federal tax laws as enacted by the Congress. Any change in the law would require legislative *action by the Congress*." Since the IRS (you) are charged with correctly administering the law, I will ask this one simple law question:

1. What specific section of law makes me a "taxpayer" as that term is defined in the IRC and who, specifically, (name, title, address, phone #) has the authority to make that determination? Please cite specific LAW (not opinion) to support your answer.
2. Did you, Deborah Reilly, take an oath of office, to uphold the Constitution to the United States of America?

Yes or No

The second question is in response to the last paragraph of your letter, in which you pretend that you have no obligation to respond truthfully to my quiries. You leave yourself open to legal liabilities and possible criminal repercussions. If you

believe that the federal government and it's office's has no legal obligation(s) to uphold my constitutional rights, and that as an employee, you have no LAWFUL obligation to answer truthfully, Please forward the LAW supporting such a position.

I AM NOT giving nor asking for opinions, to the contrary, I have been insisting on FACT and LAW. That is all I am after, plain and simple as it APPLIES TO ME!! Not to "taxpayers" but to me. If you or someone has determined that I am a "taxpayer" As that term is defined in the code, then ALL I ask is the LAW (show me) that makes me a "taxpayer" (see question #1)

Please understand, that it takes only one section (not several scattered throughout the IRC) to make me a "taxpayer" as that term is defined. If you feel a need to say that this letter cannot be answered on a point by point basis, then answer **question #1 only.** That is the only question I have asked over and over again, in several pages of letter(s). It does not nor should not take several sections of code to make a simple determination on this ONE point. It doesn't take a Library of Congress to answer one simple question of LAW. The very LAW the IRS (you, not the Library of Congress) are charged with administering. Pretending that this question requires a law degree, or Library of Congress opinions, or legal review, will not relieve you of any legal requirements you may have to respond to this ONE question of LAW.

If you feel that answering Question #1 is beyond you level of responsibility to answer, or you simply do not know the answer. Then please refer it to party responsible for such answers and inform me of who that is. Do not return statements to me regarding issues I have not discussed or have not questioned the jurisdiction of. A masquerade is not acceptable. Stay on point, please.

Awaiting your earliest possible reply, I remain,

Gregory J. Everett **NEVER RECEIVED ANSWER**

Internal Revenue Service
Department of Treasury
Cincinnati, Ohio 45999

June 28,1999
Cert: Z 506 030 685

Re: Request for Tax Return 12/31/97 &
Request for Determination of Liability

REQUEST FOR DETERMINATION OF LIABILITY

Dear IRS;

In receiving your letter titled 'REQUEST FOR YOUR TAX RETURN', I am responding with a letter to request a determination of tax liability.
Paragraph 4, states "If you believe the law does not require you to file this tax return, please tell us why on the enclosed Form 9358."

1. Has Congress ever passed a law in the negative, not requiring a person to do something? If yes, please cite the specific code and implementing regulation.

I am engaged in lawful, peaceful, God given rightful activities. I am not a "taxpayer" As that term is narrowly and strictly defined in the IRC, if you believe that I am otherwise, please cite specific code and implementing regulation that makes me a "taxpayer" and one that is subject to or liable for "individual income tax".

2. Please explain how a filing status would make a person subject to or liable for filing a "tax return" who is not a "taxpayer" as defined in the IRC. Please cite specific code and implementing regulation.
3. Please explain how a person's age, blindness, or dependency would make a person subject to or liable for a "tax return" who is not a "taxpayer" as defined in the

IRC? Please cite specific code and implementing regulation to support your claim.

4. Please explain how "total income" would make a person subject to or liable for filing a "tax return" who is not a "taxpayer" as defined in the IRC, please cite specific code and implementing regulation, that supports your claim.

Please make a determination as to whether I am required to file a "tax return" or not. If you determine that I am liable for or subject to filing, please cite the specific code and implementing regulation. If the determination is made that I am not required to File a "tax return", then I will expect a letter stating so immediately.

If you need further information to make your determination, please write to me at the enclosed address (citing the code that makes it a requirement) and I will respond as Quickly as possible. Otherwise, I expect a letter of determination within the next 10 days. If you need more time, make the request in writing and it will be granted.

Thank you for a speedy reply.

Awaiting your earliest possible reply, I remain,

Gregory J. Everett

NEVER RECEIVED ANSWER